

Elmstead Market Parish Council

Neighbourhood Development Plan and Neighbourhood Development Order

Tendring District Council – Local Planning Authority Response

15 December 2023

The LPA's response to Examiner's initial comments dated 27th November 2023 are set out below where relevant.

Regulation 16 and Regulation 23 Comments

4. I would firstly like to offer the Parish Council an opportunity to comment on the representations that were submitted to the plan as part of the Regulation 16 consultation and also the comments made in respect of the Order as a result of the Regulation 23 consultation.

FOR THE PC

5. I am not expecting a response in respect of every single point raised or indeed every representation, just those comments that the Parish Council feels it wishes to respond to.

FOR THE PC

6. Did Tendring District Council have any comments on the proposed neighbourhood plan I could not see any Regulation 16 comments?

LPA: The Council previously made representations on the Regulation 14 iteration of the emerging Neighbourhood Plan. The Parish Council made a number of amendments to the emerging Plan to address those concerns we had. The District Council was therefore not intending to make any further comments at Regulation 16 stage.

However, the Examiner will of course be aware that Ardleigh Parish Council are also preparing an emerging Neighbourhood Plan. The independent Examination of that Plan is a little way ahead of the Elmstead Examination. It is likely that the Examiner for the Ardleigh Plan will suggest their modifications to the Plan soon. One of these is very likely to be the removal of all references to the Garden Community throughout the Plan.

It is of course for the Examiner of the Elmstead Plan to come to his own decision on the emerging Plan, but perhaps there is logic in taking a similar approach on this specific planning issue.

More information on the emerging Ardleigh Neighbourhood Plan can be found on the Council's website:

<https://www.tendringdc.uk/sub-content-pages/ardleigh-neighbourhood-plan>

Strategic Policies

7. Could the District Council set out which of its local plan policies it considers are strategic policies for the purpose of general conformity, in relation to the basic conditions.

LPA: The council's strategic Policies for the purposes of Neighbourhood Plans are set out within the adopted Local Plan (para 3.2 – 3.2.3, pages 35 and 36). This states:

In addition to the Strategic Policies within Section 1 of the Plan, the main 'Strategic Policies' within Section 2 of this Local Plan that Neighbourhood Plans must be in accordance with are:

Policy SPL 1	MANAGING GROWTH
Policy SPL 2	SETTLEMENT DEVELOPMENT BOUNDARIES
Policy LP 1	HOUSING SUPPLY
Policy LP 2	HOUSING CHOICE
Policy LP 5	AFFORDABLE HOUSING
Policy LP 6	RURAL EXCEPTION SITES
Policy PP 5	TOWN CENTRE USES
Policy PP 6	EMPLOYMENT SITES
Policy PP 13	THE RURAL ECONOMY
Policy PPL 1	DEVELOPMENT AND FLOOD RISK
Policy PPL 2	COASTAL PROTECTION BELT
Policy PPL 4	BIODIVERSITY AND GEODIVERSITY
Policy PPL 5	WATER CONSERVATION, DRAINAGE AND SEWERAGE

8. I note that the Tendring Colchester Borders Garden Community DPD has been submitted to the Secretary of State. Is there a timeframe set for the examination and is there an estimate of the date for its likely adoption? I have in mind the fact that if there is a conflict between the two plans, the conflict must be resolved in favour of the policy contained in the last document to be adopted. (Section 38(5) Planning and Compulsory Purchase Act 2004)

LPA: The Tendring Colchester Borders Garden Community DPD was submitted by Tendring District Council and Colchester City Council to the Secretary of State on 21 September 2023.

An Inspector has been appointed, but no dates for the examination hearings have yet been set. However, we expect the hearings will take place in late February/early March 2024. It is anticipated that the DPD will be adopted 6-8 months after the Examination hearings, in late-2024.

Neighbourhood Plan Policies

Policy ELM 1: Settlement Development Boundaries

9. I would be particularly interested in the Parish Council's responses to the arguments made by Lawson Planning Partnership Ltd on behalf of Mr Clarkson regarding the land adjacent to Autofarm Car Sales on Clacton Road and in particular whether the appearance of that part of the site excluded from the settlement boundary, differs in terms of its appearance or character from the land to the east, which is proposed to be included within the settlement boundary. Would its redevelopment contribute to urban sprawl, bearing in mind the presence of large agricultural buildings on the site? Does the excluded site have the character and openness of the countryside.

FOR THE PC

10. Equally I would invite a Parish Council response to the comments submitted by Phase 2 Planning and Development on behalf of the Hills Group that including the barn would be a more defensible settlement boundary.

FOR THE PC

Policy ELM 2: Protecting the Setting of Elmstead Market

11. Is it the view of the Parish Council that outdoor sports and recreational facilities, such as sports pitches, golf courses as well as allotments and cemeteries and burial grounds, are uses that are unsuitable in the countryside. I have seen they are proposed as acceptable uses of the strategic gap as set out in Part E of Policy GC1 of the proposed DPD.

FOR THE PC

12. If they are considered suitable uses for the countryside, I would invite further justification as to why these types of uses would undermine the objective of maintaining a clear visual and physical break between the two settlements.

FOR THE PC

13. If the land was in the Green Belt, these would be classed as suitable uses, which maintain openness.

FOR THE PC

Policy ELM 3: Gaps Between Settlements

14. In view of the policy's objective, implied by the policy title itself, and specifically the policy's intention to avoid the visual coalescence of Elmstead Market with Great Bromley and Frating Hill, does not the distance to these adjacent settlements, mean that the proposed Corridors of Significance will in effect, play no role in maintaining a sense of separation, especially bearing in mind the combination of other policies such as settlement boundaries and countryside protection policies. It is a different scenario, to where the gap extends between two built up edges of settlements, as in the case of the Local Gap to the south of Elmstead Market.

FOR THE PC

Policy ELM 5: Affordable Housing

15. Can the District Council provide confirmation that Elmstead parish is designated as a rural area under Section 157 the Housing Act 1985. Why did the District Council not incorporate a lower threshold for the rural areas in its Local Plan Policy LP5?

LPA: The District Council can confirm that Elmstead Market and a number of other villages within the District are designated as rural areas under Section 157 of the Housing Act 1985. We include the Statutory Instrument: The Housing (Right to Buy)(Designated Rural Areas and Designated Regions) (England) Order 2005 for your convenience attached to this email.

With regard to Policy LP5, the Council's housing paper in support of the Local Plan Examination stated:

In recent years however, the Council had taken a very flexible approach to the interpretation of Policy LP5 to secure a smaller number (often around 5%) of 'gifted' dwellings on development sites to be transferred to the Council or a nominated housing trust for a nominal price of £1. This was in response to government legislation introduced in 2016 which affected the rental model for affordable housing and which made it unviable for housing associations, or the Council, to acquire 30% (or even 10%) affordable housing from large development sites, at a discount, in the traditional manner. Whilst this approach was a pragmatic solution to the delivery of affordable housing at the time (and popular with developers), it has resulted in a large number of housing developments obtaining planning permission, either from the Council or on appeal, with a commitment to deliver only a small number of affordable housing units which, when totaled up, would fall short of meeting Tendring's future needs.

Further changes to government legislation have now made it viable again for housing associations to build and acquire affordable housing and the Council's latest Viability Study confirms that 30% affordable housing is achievable on the

vast majority of development sites. Therefore, to ensure that the Council secures the maximum amount of affordable housing in the future, 'gifted' units will no longer be accepted as an alternative to the full 30% requirement.

Policy ELM 7: Housing Mix

16. Do the Parish Council have a view on whether that the policy should be strengthened, to "require" a majority of 1 and 2 bed units, rather than "seek to include"?

FOR THE PC

Policy ELM 8: Zero Carbon Buildings

17. The Secretary of State in a Written Statement to the House of Commons dated 25th March 2015 stated that neighbourhood plans should not set "any additional local technical standards or requirements related to the construction, internal layout or performance if new dwellings ". The expectations that any requirement above the Building Regulations (Part L) should only be included by a policy in a Local Plan.
18. What does the Parish Council mean by "zero carbon by design"?

FOR THE PC

19. Does the District Council have a view of the enforceability of the measures set out in criteria C and D. Also is the requirement to submit an Energy and Climate Statement set out in its Local Validation Checklist as to documents which are required to be submitted with a planning application within Tendring district.

LPA: The Council do not have a Local Validation List currently, nor are we required to have one. We are drafting a list, but there is not a requirement for a renewable statement envisaged. As set out within the Council's Regulation 24 comments at paragraph 2.13:

To ensure full compliance with these policy aims and maximise the energy efficiencies for the lifetime of the development, a condition is required to secure the submission and approval of an energy efficiency scheme. There is no policy basis for the 20% renewables condition put forward within the NDO proposals. An alternative condition is suggested at section 4 below.

Policy ELM 10: Important Views

20. Can the Parish Council set out what criteria it used to select what are proposed as Important Views.

FOR THE PC

Policy ELM 11: The Village Core

21. It appears that the requirements of Criteria C - I. and II are identical. Is that a typo?

FOR THE PC

Policy ELM13: Managing Traffic

22. Is there any agreed schemes for the traffic management measures for the schemes shown in Plans L and M ,and have they been agreed by the Highway Authority. Has the principle of a raised carriageway as suggested in Plan L, on what is a A- class road, been agreed. is it appropriate for applicants to be required to contribute to these public realm improvements and traffic mitigation measures when the feasibility of such measures, is still being explored? Does the District Council have a view as to whether these contributions would meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2020?

FOR THE PC

Policy ELM 14: Local Green Spaces

23. Can the Parish Council explain how it chose the sites proposed for designation as LGS. I was surprised, on my site visit, that other open spaces were not included, such as the land near the primary school at Elmcroft and some incidental open spaces provided in the new developments, which seemed to offer the same level of amenity, as some of the similar spaces identified e.g. sites 2 and 3.

FOR THE PC

Policy ELM 16: Nature Recovery

24. Does the District Council have a view as to whether the policy will be capable of working alongside the Net Biodiversity Gains legal requirements, which will be introduced nationally in the New Year?

LPA: Whilst the legislative requirements of Biodiversity Net Gain (BNG) are being finalised, the intention – to ensure a positive impact of at least 10% net gain on habitats – is met within Policy ELM16. The principle of the ‘Green Ring’ supports BNG and also meets the Essex Green Infrastructure Standards. Future development will need to work with the Parish Council to ensure best practice guarantees the delivery of green corridors that maximize environmental gains and community benefits.

Policy ELM 17: Health and Wellbeing Service Provision

25. Can the District Council advice whether it has adopted a CIL Scheme which can contribute towards health infrastructure improvements.

LPA: We do not have CIL.

26. Can the Parish Council expand on how it would see the developer contribution “to improve the delivery of essential health and wellbeing facilities or services”, working. Is it expected that it would be a per unit financial payment to provide funding for a new health centre?

FOR THE PC

Can the District Council advise how improvements to health facilities caused by residential development in areas where GP services are operating at capacity, are funded elsewhere in Tendring district?

LPA: Information recently obtained for the Authority Monitoring report is presented below and indicates where our health partners have requested funding and for which facilities. This money was collected within the 2022 – 2023 financial year from developers, the funds were secured in earlier planning applications.

Reference	Address	Healthcare Contribution	Purpose
16/01250/OUT	Brook Park West, Clacton	£80,961.58	Improvements at Great Clacton Medical Practice
21/00104/FUL	Admirals Farm, Great Bentley	£5,699.27	Healthcare facilities at The Hollies
20/00179/FUL	Oakwood Park, Thorpe Road, Clacton	£28,527.52	Improvements at North Clacton Medical Group
15/01234/OUT	Land East of Halstead Road, Kirby Cross	£50,772.49	Increase patient capacity within development area
15/01710/OUT	The Laurels, Thorpe Road, Kirby Cross	£43,345.84	Improvements at Thorpe and/or Frinton Surgery
20/00462/FUL	The Laurels, Thorpe Road, Kirby Cross	£2,093.55	Improvements at Thorpe and/or Frinton Surgery
TOTAL		£211,400.25	

Neighbourhood Development Order

Background to the Development

27. Can the Parish Council explain why it decided to use the Neighbourhood Development Order provisions of the legislation rather than a Community Right to Build Order?

FOR THE PC

28. Can the Parish Council set out the current situation regarding the delivery of the new community centre. Is it fully funded, is it to be delivered by the developer as part of the

wider Charity Fields development, does it have detailed planning permission? Is the new building dependent upon the receipt of a capital sum from the development of the existing community centre site? Has a contract for the building of the new community centre been let?

FOR THE PC

29. I note that the District Council is expressing concerns regarding the ability of the site to accommodate 9 units. The description is for up to 9 units but would a restriction to a smaller number of flats be able to fund the delivery of the replacement community centre?

LPA: As far as the LPA is concerned, the community centre is being built and paid for by the developer on another site as Q28 refers. The PC may be able to explain further.

30. Can the Parish Council explain how the red line for the Order has been chosen, as it does not appear to cover the whole area which is required for the development i.e. some of the development's parking appears to be on land outside the red line. Does the Parish Council own the land up to the boundary with the school, including access to the public open space to the east. Is there an impediment for the redline site to be extended up to the Market Field School boundary. Is the parking area used by users of the adjacent playing fields?

31. Does the District Council have minimum standards on the amount of communal amenity space that will be required for a development of 9 one and two bed flats?

LPA: The District Council do not have *minimum* standards. Adopted Local Plan Policy Section 2 Policy LP4 j. requires:

Policy LP 4 HOUSING LAYOUT

To ensure a positive contribution towards the District's 'sense of place', the design and layout of new residential and mixed-use developments in the Tendring District will be expected to:

j. provide for private amenity space of a size and configuration that meets the needs and expectations of residents and which is commensurate to the size of dwelling and the character of the area.

Furthermore:

In determining planning applications, the Council will also refer to the guidance provided in the Essex Design Guide for Residential & Mixed-Use Developments, 'Building for Life' and the 'Manual for Streets' and as superseded; as well as adopted Master Plans, Place Plans, Neighbourhood Plans or Village Design Statements.

Planning Conditions and Planning Obligation

32. Can the District Council comment on what appears to be an apparently contrary position with regard to the Habitat Regs. The neighbourhood plan, included Policy ELM 4 setting out proposals for the affordable housing scheme on this site, was determined that it would not have a significant adverse effect on the European protected sites, through its Habitat Regs Screening Direction. However, in relation to the Order, which promotes that same affordable housing scheme, the District Council concludes that any residential development must provide mitigation, as it could, in combination with other developments, have a significant adverse effect on the European protected site. It appears that the council is taking a contradictory position on the same development.

LPA: All new residential development (and some other types of development) requires a financial contribution toward recreational disturbance in accordance with the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document (SPD) May 2020 and adopted Local Plan Section 1 Policy SP2. A copy of the SPD has been provided to the Examiner as part of the LPA's Regulation 24 comments submission at Appendix TDC3A. This requirement is further explained at paragraph 2.11 Planning Obligation – Recreational Disturbance Financial Contribution of the Council's submission at Appendix TDC6.

The Council's Regulation 24 comments submission at Appendix TDC6 also provides suggested conditions. Suggested condition 10 aims to secure the financial contributions required.

The Council is also understood that the SEA/HRA Screening Report and the consultation response to the NDO were two separate processes akin to a sustainability appraisal of a Local Plan and then a Screening Opinion of a particular site within that Plan. The council therefore understands that these two assessments do not need to necessarily align.

33. I would welcome any comments that the Parish Council wish to make in response to the additional conditions being sought by the District Council, as well as a chance to respond to the comments that have been made, on the Parish Council's own proposed conditions, to be inserted in the Order.

FOR THE PC

34. I am now satisfied that legal authority exists for the making of a planning obligation in respect of a development consent order. If I conclude that a Section 106 agreement is required, is the Parish Council prepared to enter into such an obligation, if I consider it meets the tests of Regulation 122 of the Community Infrastructure Levy Regulations 2010?

FOR THE PC

35. Can the District Council set out what level of contributions will be expected, both in respect of the open space as well as the European protected site mitigation measures. Does the District Council have a standard template for a planning obligation that could be adapted for the purpose of an NDO, in lieu of a planning application? Does it have a view as to whether that obligation must be completed before I can make my recommendations or should I recommend that the Order can only be made, if the planning obligation is entered into before that Order is made (or indeed referred to referendum)? Does it have a view whether a planning condition could be attached to the Order which states that the development could not be commenced until that obligation had been entered into?

LPA:

1. Level of expected contributions:

- ***RAMS***

This contribution is £156.76 per dwelling (index linked).

- ***Open Space***

As per the consultation comments received from the Council's Public Realm Team dated 16/10/2023 and provided to the Examiner at Appendix TDC4 of the Council's Regulation 24 comments:

"No contribution is being requested on this occasion. Although there is a current deficit the site opposite is being made into an open space and play area."

The Council's Regulation 24 comments submission at Appendix TDC6 provides suggested conditions. Suggested condition 10 aims to secure the financial contributions required. Notwithstanding the comments provided by the Council's Public Realm Team, Condition 10 includes the mechanism to secure open space should this be considered a required by the Examiner due to the deficit identified.

Referring to the 'Addendum: Supplementary Planning Document For Policy COM6 Tendring District Local Plan 2007 - Provision of Recreational Open Space for New Development May 2021', the relevant financial requirements are (index linked):

1 Bed £1166 per dwelling

2 Bed £2333 per dwelling

2. Legal Agreement Template:

The LPA have a standard Unilateral Agreement template for RAMS and Open Space only. If the NDO development requires anything more, a S106 agreement will be drawn up based upon the specific requirements of the development.

3. Timing of Legal Agreement:

Currently, the LPA require all legal agreements to be finalised prior to the determination of a planning application.

As the Parish Council have not provided a draft legal agreement for our consideration as part of the NDO, we continue to maintain the view that a condition will be acceptable, as per Appendix TDC6 of the Council's submission.

36. Can the Parish Council offer an explanation as to why its proposed condition requires the 20% renewable energy requirement is different to the approach set out in the in its accompanying neighbourhood plan through Policy ELM 8- Zero Carbon Building?

FOR THE PC